

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

For Approval and Signature:

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JJJ

5. Whether it is to be circulated to the Civil Judge? No

M/s BATLIBOI & CO. and anothers
Versus
Municipal Corporation of the
city of Surat

Appearance:

Special C.As. No. 131/88 and 5902, 6972/87,
1429,1430,1431/88 and 1475/90

Mr A H Mehta, Sr.Advocate with Mr J A Adesara
Advocate for the petitioners
Mr G N Desai, Sr.Counsel with Mr P G Desai,
Advocate, for respondent No.1.
Ms. Harsha Devani, AGP for the State

Special C.A. No.5510/87
MR SH SANJANWALA for Petitioners
MR GN DESAI, Sr. Counsel with Mr P.G.Desai
for respondent No.1
Ms. Harsha Devani,AGP for the State

Special C.As. No.251,271/88, 4107/89, 144,1443/90

Mr S I Nanavati, Advocate for the petitioners
Mr G N Desai, Sr.Counsel with Mr P G Desai,
Advocate for respondent No.1
Ms. Harsha Devani, AGP for the State

Special C.A. No.1403/89

Mr P B Majmudar, Advocate for the petitioner
Ms. Harsha Devani, AGP for the State

CORAM : MR.JUSTICE N.N.MATHUR
Date of decision: 18.06.96

COMMON ORAL JUDGMENT

The key and substantial question of law which arises for consideration in this group of writ petitions is whether the respondent Municipal Corporation of the City of Surat (for short, 'Corporation') is entitled to levy and collect property taxes on the basis of assessment not completed within the official year i.e. before 31.3.19987 under the provisions of the Bombay Provincial Municipal Corporation Act and the Taxation Rules contained in Appendix 'A' Chapter VIII appended to the said Act.

2. The similar question raised has been answered more than once by Apex Court and this Court. Reference may be made to a decision in the case of Municipal Corporation of the City of Ahmedabad vs. Jhaveri Keshavlal Lallubhai, reported in 6 GLR 228 and an unreported decision dated 14/27.10.69 rendered in a group of petitions in the case of Arvind Mills Co.Ltd. vs. Municipal Corporation of CTF, Ahmedabad & Ors. being Special Civil Application No.662/68 & Ors, and a decision of the Apex Court in the case of City of Hubli vs. Subharao Hanumantharao Prayas, reported in AIR 1976 SC 1398 dealing with the identical provisions. However, the judgments are sought to be distinguished by the respondent Corporation on the ground that the said decisions were rendered considering the provisions of Bombay Municipal Boroughs Act which contains the provisions of authentication of assessment book but provision does not exist in the Bombay Provincial Municipal Corporations Act (for short 'BPMC' Act).

3. Facts giving rise to this group of petitions are substantially same and as such for convenience one of the petitions being Special Civil Application No.131/88 in the case of M/s.Batliboi & Co. & Anr. vs. Municipal Corporation of City of Surat is taken as a leading case.

4. Few necessary facts are that the limits of respondent-Corporation was altered with effect from 1.4.1986 and as such the properties and the premises of the petitioners came within the limits of the respondent-Corporation. With the inclusion of the extended area within the limits of the respondent Corporation, the provisions of the BPMC Act became applicable and as such the property taxes became leviable in respect of properties of the petitioners in accordance with the provisions of the BPMC Act and Rules framed thereunder. The say of the petitioner is that after the properties of the petitioners-Company came within the limits of the respondent Corporation with effect from 1.4.1986, for the first time a special notice was served on the petitioner on 12.6.1987 after the closing of the official year 1986-87. The said notice referred to for the period beginning from 1.4.1986 to 31.3.1987. The petitioners-Company filed a complaint on 20.6.1987. The Corporation gave its decision on 24.10.1987 fixing the Gross Annual rating Value of the properties of the petitioner Company at Rs.6,04,200/-, with effect from 1.4.1986. The Corporation thereafter, issued a bill dated 30.12.1987. Referring to the provisions of the

BPMC Act and the Taxation Rules, it is contended that the assessment of the property taxes of a particular official year for valid imposition of those taxes must be taken before the year runs out. Once the official year is over, the Corporation has no power to assess for the past official year. It is submitted that the official year for the period 1.4.1986 to 31.3.1987 expired on 31.3.1987 and till that date no assessment was made. Even the special notice was issued first time on 26.6.1987 i.e. after the close of the official year 1986-87. An entry in the assessment book could be made only after deciding the objections. The objections were decided on 29.10.1987.

5. On the other hand, the case of the respondent Corporation is that the premises of the petitioners came within the limits of the Surat Municipal Corporation w.e.f. 1.4.1986. Thereafter, the properties were inspected and entries were made in the assessment book under clauses (a) to (d) of Rule 9. On 16.3.1987, the public notice was given as contemplated under Rule 15 (1) of the Rules. It is submitted that the process of assessment came to be completed with the making of entry in the assessment book under Rule 9(a) to (d) which was done during the financial year i.e. before 31.3.1987. It is further submitted that the issuing of special notice and decision on the objections do not make any difference. It is also contended that the petitioners have alternative remedy by way of appeal under section 406 of the BPMC Act. It is further submitted that in fact the petitioners have filed appeals and they are pending before the Civil Judge (SD), Surat.

6. In order to appreciate the rival contentions of the parties, it would be appropriate to briefly acquaint with the relevant provisions of the BPMC Act on taxes. Chapter XI of the BPMC Act, 1949 deals with the taxes. Section 127 enumerates the taxes to be imposed under the Act. Sub-section (1) of section 127 enumerates obligatory taxes. Sub-section (2) refers to other taxes leviable at the option of the Corporation. Property tax constitute an item of obligatory taxes. Sub-section (1) of section 129 lays down that for the purpose of sub-section (i) of section 127, property taxes shall comprise water tax, conservancy tax and general tax which shall be subject to the exceptions, limitations and conditions provided to be levied on building and land in the City at such percentage of their rateable value as may be determined by the Corporation and so far as general tax is concerned, it may be levied, if the Corporation so determines, on a graduated scale.

Schedule 'A' to the Act contains chapters providing for rules in respect of various subject matters. Chapter VIII of the said schedule 'A' contains tax rules. Rule 9 of the said Rules deals with keeping of an Assessment Book by the Commissioner. Material part of the said Rule is as under:

"9. The Commissioner shall keep a book, to be called 'the Assessment Book', in which shall be entered every official year -

- (a) a list of all buildings or lands or as the case may be, premises in the City, distinguishing each either by name or number as he shall think fit, and containing such particulars, regarding the location of nature of each as will, in his opinion be sufficient for identification'
 - (b) the rateable value of each such building or land or as the case may be, premises determined in accordance with the provisions of this Act and the Rules;
 - (c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land or as the case may be, premises;
 - (d) if any such building or land or as the case may be, premises is not liable to be assessed to the general tax, the reasons of such non-liability;
 - (e) when the rates of the property taxes to be levied for the year have been duly fixed by the Corporation and either the period fixed by public notice, as hereinafter provided, or the receipt of compliance against the amount of rateable value entered in any portion of the assessment book has expired, or the complaint if any, made against any entry has been disposed of in accordance with the provisions hereinafter contained, the amount at which each building or land or premises entered in such portion of the assessment book is assessed to each of the property taxes, if any, leviable therein. "
- (Reproduced as it is)

7. In an unreported judgment referred to above the entries required by clauses (a), (b), (c), and (d) of Rule 9 has been referred as the initial entries as and

when these initial entries are completed in the assessment book, Rule 13 (1) requires the Commissioner to give a public notice thereof and of the places where the assessment book or the section or a copy of it may be inspected. Rule 13 reads as under:

"When the entries required by clauses (a), (b), (c), and (d), of rule 9 have been completed, as far as practicable, the Commissioner shall give public notice thereof and of the place where the assessment book or the section or a copy of it may be inspected."

The public notice is required to be given by the Commissioner, as provided under Rule 15(1), which reads as under:

"The Commissioner shall, at the time and in the manner prescribed in rule 13, give public notice of a day, not being less than fifteen days from the publication of such notice, on or before which complaints against the amount of any rateable value entered in the assessment book will be received in his office."

Rule 16 provides for time and manner of filing of complaint against the amount of any rateable value entered in the assessment book or against the mention of the name of any person as primarily liable for the payment of property taxes or against the entry indicating the use of any building or land or premises liable to be assessed to the general tax. Rule 17 casts duty on the Commissioner to give notice to each complainant, of the day, time and place when and where his complaint will be investigated. Rule 18 provides for hearing of the complaint. Sub-rule (3) of Rule 18 provides that when the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under rule 17 and any necessary amendment shall be made in accordance with such result in the assessment book. Rule 18 reads as follows:

"18(1) At the time and place so fixed, the Commissioner shall investigate and dispose of the complaint in the presence of the complainant, if he shall appear and, if not, in his absence.

(2) For reasonable cause, the Commissioner may from time to time adjourn the investigation.

(3) When the complaint is disposed of, the result

thereof shall be noted in the book of complaints kept under rule 17 and any necessary amendment shall be made in accordance with such result in the assessment book."

Rule 19 as amended (with amendment 8/16) provides that entries required by clause (e) of rule 9 shall be made on the disposal of the complaint, if any. The entries so made in the assessment book shall be conclusive evidence as to the amount of the respective property tax leviable on the respective building, land or premises in the official year to which the assessment book relates. Rule 19 reads under -

"Entries required by clause (e) of rule 9 shall be made on the disposal of the complaint, if any, and thereupon the entries so made in the assessment book, subject to such alterations as may thereafter be made therein under rule 5 or 20, shall be conclusive evidence as to the amount of the respective property tax leviable on the respective building, land or premises in the official year to which the assessment book relates."

8. Rule 19 prior to its amendment provided for authentication of the entries in the assessment book by way of certification. The unamended Rule 19 reads as follows:

"(1) When all such complaints, if any, have been disposed of and the entries required by clause (e) of rule 9 have been completed in the ward assessment-book, the said book shall be authenticated by the Commissioner, who shall certify, under his signature, that except in the cases, if any, in which amendments have been made as shown therein, no valid objection has been made to the rateable values entered in the said book.

(2) Thereupon the said ward assessment-book subject to such alterations as may thereafter be made therein under the provisions of rule 20 shall be accepted as conclusive evidence of the amount of each property tax leviable on each building and land in the ward in the official year to which the book relates."

Thus, the Rule has been substituted by new provisions dispensing with authentication. Rule 20 confers power on the Commissioner to amend any entry in the assessment book during the official year to which the assessment relates. Such amendments can be made in the assessment book during the official year upon representation of any person concerned or upon any information at any time during the official year to which the assessment book relates subject to the provisions of sub-rule (2). Rule 21 provides that the new assessment book need not be prepared every year but it has to be prepared at least once in every 4 years. Rule 21A envisages that whenever it is noticed by the Commissioner that a new building has been erected or a building has been rebuilt or enlarged or any building which has been vacant has been reoccupied or the user of any building has been changed and that the person primarily liable for the property taxes on such building has failed to give notice as required by sub-rule (i) of rule 5, the Commissioner may, within a period of one year from the date on which the aforesaid relevant facts came to his notice, proceed to fix or refix the rateable value of such building and assess or reassess the property taxes on such building. It is pertinent to note that while by Gujarat Amendment Act No.8/88, Rule 19 was substituted as stated above, new Rules being 21-A and 21-B were inserted. Rule 21B sets out certain contingencies in which the Commissioner may prepare and complete the assessment book even after expiry of official year. Thus, the amendment of Rule 21B read with Rule 19 by necessary implications suggest that except for the contingencies set out in the Rule, the assessment tax for any particular official year must be completed before the expiry of the official year. Rule 21B reads as follows:

"Nothing in the foregoing provisions of this Chapter shall affect the preparation and completion of the assessment book or of any part thereof or of any entry therein after the expiry of the year to which it relates, if such preparation or completion was not possible before the expiry of the year on account of any order of a court or any other competent authority, and the levy, collection and recovery of any tax based on such assessment-book, part or as the case may be entry shall not be called in question merely on the ground that the assessment-book, part, or, as the case may be entry was not prepared or completed during the year to which it related."

9. The analysis of provisions of Rules 9 to 21B clearly shows that these provisions deal with one continuous integrated process of assessment culminating in final entry in the assessment-book under rule 9(c) which is of conclusive nature as envisaged by rule 13. The contention of Mr A H Mehta, learned Advocate for the petitioner is that till entries are made under rule 9(e) in the assessment book, the assessment is not complete and it does not give rise to liability to pay tax. On the other hand, the contention of Mr G N Desai, learned Advocate for the respondent Corporation is that rule 9 itself does not provide for any method of assessment and as such if no objections are filed, the entries made under Rule 9 (a) to (d) will be the basis of levy of property tax. I am unable to agree with the submission of Mr Desai. The scheme under Chapter VIII clearly provides three stages in imposition of tax, namely; (i) declaration of liability (ii) assessment and (3) levy and recovery of tax. There can be no levy of property tax unless the procedure provided under Rule 9 to 21B is followed which includes preparation of assessment list, its publication and finalisation of objections. Assessment list is prepared on the basis of information collected by the staff or any other agency employed by the Corporation. It is an ex-parte entry. It carries no force. Thus, it is merely a declaration of liability. This declaration is made by way of public notice as provided under Rule 13 and other relevant rules. The second important stage is assessment. Rule 13 provides for public notice, rule 14 provides that assessment book should to be kept open for inspection, and rule 15 provides for time for filing complaint against evaluation under the public notice. Rule 16 provides for time and manner of filing complaints against evaluation. Rule 17 says about notice to complainants of day fixed for investigation of the complaints. Rule 18 provides for the manner of hearing of complaints. After the complaints are disposed of in accordance with the provisions hereinabove referred, the Commissioner is required to make entry in the assessment book of the amount at which each building or land or premises, assessed to each of the property taxes, if any. After the assessment is over, the third stage is of levy of tax on the basis of the figure arrived after due assessment. Thus, the initial entry under rule 9(a) to (d) is nothing but an initial entry initiating process of assessment which cannot be the basis of levy of taxes without proper assessment.

10. The Division Bench of this Court in KESHAVLAL's case (supra), has described the initial entry as a proposal of Municipality which sets into motion the machinery of assessment. In para 9 of the judgment, the Division Bench has given reasons as to why no liability can be held to arise on the preparation of assessment list, and the authentication of the assessment list must be regarded as the only stage at which liability can arise; viz. (1) the Legislature could never have intended that liability should be imposed on the tax-payer without giving an opportunity to show-cause why such liability should not be imposed on him; (2) if the preparation of assessment list creates liability then in case no objections are filed on just expiry of the period of public notice, the tax-payer will be liable to pay the amount immediately which will be contrary to the scheme as under the scheme, no liability attached to the tax-payer on the preparation of assessment list. It is only on authentication of assessment list that the liability arises.

11. I have carefully compared the scheme as it stood before the amendment and after the amendment and also the relevant provisions of the BPMC Act. In my view, the dispensation of requirement of authentication does not make any material difference in the scheme. Under the unamended rule 19 after the entries made under rule 9 (e) it was required to be authenticated by the Commissioner. A reading of rule 9 (e) clearly provides that a final entry is to be made only after expiry of the period of public notice and if any complaint is filed, the same has been disposed of in accordance with the provisions provided under the rules. Therefore, to ask for further authentication by way of certificate was considered as superfluous exercise. The clue of the legislative intention can be gathered from the reading of section 21B. Rule 21A and 21B were added by the same amending Act by which Rule 19 was amended and thereby provision has been made of amendment in the assessment book after the expiry of the official year only on certain set of contingencies. This clearly indicates that the legislature intended to attach finality of the entry made under rule 9(e). It may be noticed that sub-rule (2) of rule 19 which provide for the entry under rule 9(e) as of conclusive nature has been retained under the redrafted rule 19. In view of this a further authentication by way of certificate was only a time consuming exercise delaying the finality of the entry. Thus, on the fresh analysis of the entire scheme and in view of the law laid down by this Court in KESHAVLAL's case (supra), the

contention of the petitioners deserves to be upheld that the liability of tax arises only after the final entry is made under rule 9(e) and not before.

12. Having taken the view that the process of levying the tax commences with final entry in the assessment-book under rule 9(e), the further question which requires consideration is that whether such final entry not made during the financial year can give rise to liability to pay the tax? Official year has been defined under section 2(44) of the BPMC Act which means the year commencing from the first day of April. On the analysis of the scheme as referred to above, it clearly appears that the assessment list is prepared for the official year. It is not necessary to prepare the new list every year subject to the condition that every part of the assessment list is prepared and revised not less than once in 4 years. The Commissioner may adopt valuation and assessment contained in the list for any year with such alteration necessary for the year immediately following. The Commissioner is thus empowered to adopt valuation and assessment contained in the assessment list for any year for the immediately following year. Thus, the scheme postulates that there would be assessment list for a particular official year at the close of the official year so that the valuation and assessment contained in it can be adopted by the Commissioner for the immediately following year. The assessment list which it contemplates is the entry in the assessment book under rule 9(e). An entry in the assessment book which the commissioner may adopt in the following year has to be completed within the official year to which it is related. Thus, reading the provisions under Chapter VII only suggests that it is only on the entry which has been made in Assessment Book under rule 9(e) within the official year is liable to tax. This is the view which has been taken in KESHAVALAL'S CASE (SUPRA).

13. In the case of Anand Mills Cooperatives Ltd. v. Municipal Corporation of CTE, Ahmedabad, after noticing the substituted rule 19 which has dispensed with the requirement of authentication, the Court held that the decision in KESHAVALAL's case (supra) has been recognised by the legislature in introducing rule 21B. The Court said that rule 21B accepts by necessary implications, that having regard to the scheme of the Corporation Act and the rules, the assessment of the property tax for any official year must be completed before the expiry of the official year. In SUBHA RAO's case (supra) dealing with the identical provisions it has been held that it is on the authentication of assessment list that the liability

of the rate-payers to pay tax arises, and such a list becomes effective from the first day of the official year. The Court held that authentication must be made within the official year. The Court said thus:-

"The tax, being a tax for the Official year, must obviously be levied during the official year and since the levy of the tax is complete only when the assessment list is authenticated, it must follow a fortiori that the authentication on the making of which alone the levy of the tax is effected, must take place in the official year."

Comparing the two sets of provisions i.e. Provisions of Bombay Municipal Boroughs Act and unamended provisions of BPMC Act and mended provisions, I have held that dispensing with the requirement of authentication has not materially effected the scheme and thus in my view the aforesaid two decisions of this Court and the decision of the Apex Court are not distinguishable on the ground that the said decisions were rendered considering the provisions of authentication of entry in the assessment book. It may be stated that in ANAND MILLS' case (supra), the Division Bench of this court also considered the amended or substituted rule 19.

14. In the present case, for the official year 1986-87, while the public notice under rule 15(1) was given on 16.3.1987, the special notice was given on 12.6.1987. The petitioners filed complaiant on 20.6.1987 and the Corporation gave its decision on 24.10.1987 fixing the gross annual rating value of the concerned properties. Thus apparently an entry in the assessment-book for the year 1986-87 was sought to be made after the expiry of the official year. As I have taken the view that the entry in the assessment book except for the contingencies provided under Rule 21B must be made before the expiry of the official year, the assessment made in the month of October, 1987 is clearly void and inoperative and does not give rise to liability to pay the tax by the rate-payers.

15. It is contended by Mr P G Desai, learned Advocate for the Corporation that not only the petitioner have remedy under section 406 of the BPMC Act, by way of appeal, but in fact the appeals have been filed against the decision of the Commissioner and the same are pending

in the Court of Civil Judge (SD), Surat and as such this group of Special Civil Applications deserves to be rejected only on this ground. He relies on an unreported decision in the case of ANAND MILLS' (supra) referred to above. In the said case, this court held that all questions of law except the only questions of constitutional validity can be decided by a Chief Judge in Appeal under section 406(1). But in the same judgment, the Court having arrived at the conclusion that the order of the Commissioner delegating powers under Rule 18 to the Deputy Commissioner was ultra vires and bad in law, and therefore, irrespective of the fact that alternative remedy under section 406 of the BMC Act was available, the Court quashed the relevant entry in the assessment book because of the total lack of jurisdiction on the Deputy Municipal Commissioner to dispose of the complaint. In the present case, I have held that the levy of tax for the year 1986-87 on the basis of assessment made after the complaint of the official year i.e. 31.3.1987 is void and inoperative being made after the expiry of the official year. In view of this and further the fact that this group of petitions are pending since the year 1986, it would not be expedient to throw away the petitions so far as it relate to the official year 1986-87 is concerned. However, so far as the entry in the assessment book for the official year 1987-88 and onwards years are concerned, there is no material on record to show whether the entries made for the year 1986-87 were adopted for the subsequent year or when the public notice was issued and so many other necessary informations are lacking. In absence of such materials, it will not be appropriate for this Court to declare upon the validity or otherwise for the entry in the assessment book and the levy of taxes. I am told that in some of the cases, the appeals have been filed and they are pending before the competent court. In view of this, I decline to examine the validity of the entry in the assessment book and the levy of tax thereon for the year 1987-88 and onwards.

16. In the result, Special Civil Applications No.5510/87, 131/88, 5902/87, 1430/88, 271/88, 1475/90, 1431/87, 1429/88 and 4107/89 are partly allowed and it is directed that the bill raised in the respective petitions on the basis of assessment of the properties belonging to the petitioners for the Assessment Year 1986 - 87 is declared to be void and inoperative and as such, quashed. Special Civil Applications Nos. 6972/87, 2701/91, 1441/90, 1443/90 stand dismissed. It will be open for the parties to take appropriate remedy permissible under the law, subject to just objections. Rule made absolute

in Special Civil Applications No.5510/87, 131/88, 5902/87, 1430/88, 271/88, 1475/90, 1431/87, 1429/88 and 4107/89 to the aforesaid extent. Rule in Special Civil Applications Nos. 6972/87, 2701/91, 1441/90 and 1443/90 discharged.